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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TESORO REFINING & MARKETING
COMPANY LLC, a Delaware limited
liability company,

Plaintiff,

v.

SB GAS & WASH MANAGEMENT,
INC., a California corporation; and
AHMAD ABADI, an individual,

Defendants.

Case No. 2:18-CV-04895-SVW-MAA

[Judge Stephen V. Wilson]

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION FOR ENTRY OF
DEFAULT JUDGMENT**

[Declarations of John L. Castañeda,
Sherrie L. Caudle, and Ashley Vinson
Crawford; Memorandum of Points and
Authorities Filed Concurrently]

Date: October 15, 2018

Time: 1:30 p.m.

Courtroom: 10A

Date Action Filed: June 1, 2018

1 TO DEFENDANTS:

2 PLEASE TAKE NOTICE that on Monday October 15, 2018 at 1:30 p.m., or as
 3 soon thereafter as the Court allows, in Courtroom 10A, located at First Street
 4 Courthouse, 350 W. 1st Street, Los Angeles, California 90012, Tesoro Refining &
 5 Marketing Company, LLC ("Plaintiff") will, and hereby does, move the Court to enter a
 6 default judgment against SB Gas & Wash Management, Inc. and Ahmad G.S. Abadi
 7 (collectively "Defendants") in this action.

8 In connection with this motion, Plaintiff presents proof of the following matters:

- 9 1. Defendants are not infants, incompetent persons, or in the military service (the
 10 latter meaning the Servicemembers Civil Relief Act does not apply).
- 11 2. Defendants have not filed responses to the Complaint (ECF 1) in this action.
- 12 3. None of the Defendants have appeared personally or by representative and,
 13 therefore, the Defendants are not entitled to notice of this motion under L.R.
 14 55-1(e) and Fed. R. Civ. P. 55(b)(2). Nonetheless, Plaintiff sent a letter dated
 15 August 23, 2018 to Defendants notifying them of Plaintiff's intention to seek
 16 default judgment against them and of the amount of damages Plaintiff will
 17 seek.
- 18 4. Plaintiffs are entitled to judgment against Defendants on all claims pleaded in
 19 the Complaint.
- 20 5. As set forth in the attached memorandum, Plaintiff seeks a judgment for
 21 contract damages, pre-judgment interest as calculated under the applicable
 22 contracts, attorneys' fees and costs, and post-judgment interest.

23 This Motion is based on this Notice of Motion, the attached Memorandum of
 24 Points and Authorities, the Declarations of John L. Castañeda, Sherrie L. Caudle, and
 25 Ashley Vinson Crawford, all attached exhibits, all other pleadings and papers on record
 26 in this action, and upon such oral argument as may be made at the hearing. The clerk
 27 has previously entered default against Defendants on August 20, 2018. ECF 12.

1 There was no pre-filing conference pursuant to L.R. 7-3 because default was
2 previously entered against Defendants, which Plaintiff notified Defendants of in a letter
3 dated August 23, 2018, and Defendants have not answered or responded to the
4 Complaint. Nor have Defendants contacted Plaintiff in response to the same letter dated
5 August 23, 2018.

6
7 Dated: September 26, 2018

AKIN GUMP STRAUSS HAUER & FELD LLP
SUSAN K. LEADER
ASHLEY VINSON CRAWFORD
KELLY A. HANDSCHUMACHER

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11 By /s/ Ashley Vinson Crawford
Ashley Vinson Crawford
Attorneys for Plaintiff
12 Tesoro Refining & Marketing Company LLC
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1 I. INTRODUCTION

2 On June 1, 2018, Tesoro Refining & Marketing Company, LLC (“TRMC” or
3 “Plaintiff”) filed its Complaint for Breach of Contract and Breach of Guaranty (ECF 1)
4 against SB Gas & Wash Management, Inc. and Ahmad G.S. Abadi (collectively
5 “Defendants”). On July 14, 2018, Defendants were served with a summons and a copy
6 of the Complaint by personal service upon Mr. Abadi on behalf of himself and on behalf
7 of SB Gas & Wash Management, Inc. as its president, who is authorized to accept
8 service on behalf of SB Gas & Wash Management, Inc. ECF 8, 9. Defendants did not
9 file a responsive pleading or otherwise defend the suit within 21 days of being served
10 with the summons and complaint, as computed under Fed. R. Civ. P. 6(a)(1). ECF 11 at
11 1-2.

12 On August 20, 2018, the Clerk entered default against Defendants. ECF 12.

13 Pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, Plaintiff now
14 moves the Court for entry of a default judgment against Defendants in the amount of
15 \$490,859.79 (consisting of \$424,075.90 in contract damages plus \$53,237.62 of
16 prejudgment interest and \$13,546.27 in costs and attorney fees), as well as an award of
17 post-judgment interest on the default judgment amount. The Declaration of John L.
18 Castañeda (“Castañeda Decl.”), the Declaration of Sherrie L. Caudle (“Caudle Decl.”),
19 and the Declaration of Ashley Vinson Crawford (“Crawford Decl.”) are submitted in
20 support of this motion.

21 II. NATURE OF THE CASE

22 Defendant SB Gas & Wash Management, Inc. (“SB Gas”) operated a Shell-
23 branded gasoline station located at 2160 South Euclid Avenue, Ontario, California (the
24 “Station”), pursuant to a ten-year supply agreement with TRMC, which commenced in
25 2013. ECF 1 ¶ 1. Defendant Ahmad G.S. Abadi (“Mr. Abadi,” or the “Guarantor”)
26 personally guaranteed all of SB Gas’s debts and obligations to TRMC. *Id.*

27 Spirit SPE Portfolio CA-C Stores, LLC (“Spirit”) leased the property to SB Gas
28 on which it operated the Station. ECF 1 ¶ 2. In January 2017, Spirit filed several

1 unlawful detainer lawsuits in California seeking to evict SB Gas from the Station and a
 2 number of other gas station locations it leased from Spirit. *Id.* In March 2017, SB Gas
 3 entered into stipulated judgments in the eviction lawsuits, pursuant to which SB Gas
 4 was evicted from the Station. *Id.* In April 2017, SB Gas stopped purchasing gasoline
 5 from Plaintiff for the Station. *Id.* Thereafter, another operator began selling non-
 6 branded gasoline at the Station. *Id.*

7 TRMC invested significant amounts of money and other resources in reliance on,
 8 among other things, the commitment by SB Gas and its Guarantor to sell gasoline
 9 supplied by TRMC at the Station for the duration of the ten-year term. ECF 1 ¶ 3.
 10 TRMC brought this action for damages caused by SB Gas's breaches of the parties'
 11 agreements. *Id.*

12 **III. FACTUAL BACKGROUND**

13 On October 1, 2013, TRMC entered a Retail Sales Agreement ("RSA") with
 14 Team West Enterprises, Inc. ("Team West") for the sale of a minimum quantity of
 15 15,000,000 gallons of diesel and Shell-branded gasoline to the Station over a ten-year
 16 term commencing on October 1, 2013. ECF 1 ¶ 10, ECF 1-1. Also on October 1, 2013,
 17 TRMC and Team West entered into a Retailer Loan Agreement ("RLA") whereby
 18 TRMC loaned Team West \$125,000 on the condition that Team West install Shell
 19 branding at the Station. ECF 1 ¶ 11, ECF 1-2.

20 The RSA includes a liquidated damages provision, which obligates the Retailer
 21 (then Team West) to pay TRMC a pre-determined amount in the event of termination
 22 prior to the purchase of the 15,000,000 gallon Minimum Quantity specified in the RSA,
 23 calculated by multiplying \$.025 per gallon by the difference between the 15,000,000
 24 gallon Minimum Quantity and the gallons actually purchased during the RSA term.
 25 ECF 1 ¶ 12, ECF 1-1 at 8. The RSA also provides that "[t]he prevailing party will be
 26 entitled to recover from the other party reasonable attorneys' fees and other legal costs
 27 the party incurs in order to secure, defend or protect the rights inuring to the prevailing
 28

1 party under this Agreement, or to enforce the terms thereof.” ECF 1 ¶ 13, ECF 1-1 at
2 25.

3 The RLA states that an “Event of Default” includes when a “Seller terminates the
4 RSA in compliance with the Federal Petroleum Marketing Practices Act.” ECF 1 ¶ 14,
5 ECF 1-2 at 7. It further provides:

6 Upon the occurrence of any Event of Default [TRMC] shall
7 have . . . the right to terminate [the RLA], effective in Seller’s
8 sole discretion on or at anytime after the date of the Event of
9 Default, in which case the unamortized, unforgiven portion of
10 the Retailer Loan, and all accrued interest thereon . . . and any
11 other amounts owed by Retailer to Seller under this Agreement,
12 the RSA . . . or any other agreement, instrument, note, or
13 contract between Seller and Retailer, shall become immediately
14 due and payable . . . to Seller. Interest shall accrue on all such
15 amounts at the rate of twelve percent (12%) per annum,
16 compounded monthly, or at the highest lawful rate of interest
17 authorized under California state law, whichever amount is
18 lower, accruing from the date Seller terminates this Agreement
19 until paid in full.

20 ECF 1 ¶ 14, ECF 1-2 at 6-7.

21 On or about August 21, 2014, SB Gas executed an Assignment and Assumption
22 of Retailer Agreements and a Loan Assignment and Assumption Agreement with TRMC
23 and Team West, pursuant to which SB Gas assumed the rights and obligations of Team
24 West under the RSA, the RLA, and other specified agreements between TRMC and
25 Team West. ECF 1 ¶ 15, ECF 1-3, 1-4. Also on or about August 21, 2014, Mr. Abadi
26 executed a Continuing Guaranty that guaranteed “the full payment and performance,
27 when due, of all Obligations” of SB Gas to TRMC. ECF 1 ¶ 16, ECF 1-5 at 2. The
28 Continuing Guaranty also provided that “Guarantor agrees to pay all costs and expenses,
including, without limitation, reasonable attorneys’ fees and disbursements which are
incurred by [TRMC] in enforcement of this Guaranty.” ECF 1 ¶ 16, ECF 1-5 at 6.

In March 2017, SB Gas entered into a stipulated judgment with Spirit pursuant to
which SB Gas was evicted from the Station. ECF 1 ¶ 17. In April 2017, SB Gas
stopped purchasing gasoline from TRMC for the Station. *Id.* ¶ 18. Prior to this date,
only 3,036,964 gallons of diesel and Shell-branded gasoline were purchased during the

1 RSA term. *Id.* ¶ 19; Exhibit 1 to Castañeda Decl. On or about June 13, 2017, TRMC
 2 sent a Notice of Termination to SB Gas terminating the RSA and the franchise
 3 relationship effective immediately. ECF 1 ¶ 20; Exhibit 1 to Caudle Decl. On
 4 information and belief, thereafter, another operator began selling non-branded gasoline
 5 at the Station. ECF 1 ¶ 21. Neither SB Gas nor anyone else operating the Station has
 6 purchased gasoline from TRMC to supply the Station since, at the latest, April 3, 2017.
 7 ECF 1 ¶ 22. SB Gas has not repaid TRMC any amounts due under the RSA or the
 8 Retailer Loan Agreement. ECF 1 ¶ 23.

9 **IV. ALL PROCEDURAL REQUIREMENTS FOR A DEFAULT JUDGMENT**
 10 **HAVE BEEN MET.**

11 The Clerk has entered default against each Defendant. Pursuant to Local Rule
 12 55-1, the Declarations of Ashley Vinson Crawford and Sherrie L. Caudle submitted
 13 herewith collectively state: (1) when and against what party the default was entered; (2)
 14 the identification of the pleading to which default was entered; (3) that each Defendant
 15 is not an infant or incompetent person; (4) that the Servicemember's Civil Relief Act
 16 (50 U.S.C. App. § 521) does not apply; and (5) that Plaintiff has provided notice to
 17 Defendants of its plan to file a motion for default judgment even though neither
 18 Defendant has appeared within the meaning of Fed. R. Civ. P. 55(b)(2). Crawford Decl.
 19 ¶¶ 2-8; Caudle Decl. ¶ 3. With these procedural requirements met, Federal Rule of Civil
 20 Procedure 55(b)(2) and the Local Rules authorize the Court to enter default judgment
 21 against each Defendant. *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1174
 22 (C.D. Cal. 2002).

23 **V. A DEFAULT JUDGMENT IS REQUESTED IN THE AMOUNT OF**
 24 **\$490,859.79.**

25 The total amount sought in the proposed default judgment is \$490,859.79. This
 26 amount consists of the contract damages under the RLA and RSA, the prejudgment
 27 interest on those damages, and the costs and attorney fees for this action. The damages
 28

under the RSA are \$299,075.90 and under the RLA are \$125,000. Exhibit 1 to Castañeda Decl.; Castañeda Decl. ¶ 2.

Prejudgment interest on the RSA damages, calculated at 10% per annum from the date of the event triggering SB Gas's indebtedness to TRMC, which is when TRMC terminated the contract for cause on June 13, 2017 in compliance with the Federal Petroleum Marketing Practices Act (Exhibit 1 to Caudle Decl.), totals \$37,384.49 as of September 13, 2018 (15 months after the date triggering SB Gas's indebtedness). Prejudgment interest on the RLA damages, calculated at 12% per annum, compounded monthly, from the date of the event of default, which is the date that TRMC terminated the RLA on June 13, 2017 (Exhibit 2 to Caudle Decl.), totals \$15,853.13 as of September 13, 2018 (15 months after the event of default).

Under the attorneys' fees schedule in Local Rule 55-3, attorneys' fees for judgments over \$100,000 shall be calculated as \$5,600 plus 2% of the judgment amount (excluding costs) over \$100,000. Here, the judgment amount exclusive of costs is \$477,313.52. Thus, under the schedule, attorneys' fees here are \$13,146.27.

In addition to attorneys' fees, damages, and interest, TRMC seeks \$400 for its cost of filing the complaint in this action. See Crawford Decl. ¶ 9; Exhibit 3 to Crawford Decl.

Pursuant to 28 U.S.C. § 1961(a), TRMC seeks an award of post-judgment interest on the final judgment amount of \$490,859.79 at a rate equal to the weekly average 1-year constant maturity Treasury yield, as published by the Board of Governors of the Federal Reserve System, for the calendar week preceding the date of this judgment.

VI. THE *EITEL* FACTORS FAVOR ENTERING DEFAULT JUDGMENT

Once a plaintiff complies with the procedural requirements, the Court may enter default judgment consistent with the factors set forth in *Eitel v. McCool*, 782 F.2d 1470 (9th Cir. 1986). Specifically, the *Eitel* factors are "(1) the possibility of prejudice to the plaintiff; (2) the merit of the plaintiff's substantive claims; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute

1 concerning material facts; (6) whether the default was due to excusable neglect; and (7)
 2 the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on
 3 the merits.” *Id.* at 1471-72. Importantly, “default judgments are more often granted
 4 than denied.” *Philip Morris USA Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 498
 5 (C.D. Cal. 2003) (citation omitted). As detailed below, the weight of these factors
 6 strongly favors entry of default judgment.

7 **A. TRMC Would Suffer Prejudice In The Absence Of A Default**
 8 **Judgment.**

9 The first *Eitel* factor is whether failure to grant a default judgment would result in
 10 prejudice to the plaintiff. *Eitel*, 782 F.2d at 1471. Here, if default judgment is not
 11 entered, TRMC will be left with no other recourse for recovery against the Defendants,
 12 who refuse to respond to the Complaint. *See Castworld Prods., Inc.*, 219 F.R.D. at 499.
 13 Defendants have failed to respond to the properly served complaint and the letter sent
 14 by TRMC’s counsel. Crawford Decl. ¶¶ 2-6. Defendants also failed to respond to
 15 TRMC’s Notice of Termination letter dated June 13, 2017, which informed them of the
 16 amounts owed to TRMC upon termination of the RSA and related agreements.
 17 Castañeda Decl. ¶ 3; Exhibit 1 to Caudle Decl. Accordingly, “a default judgment is the
 18 only means available for compensating Plaintiff for Defendants’ violations.” *Amini*
 19 *Innovation Corp. v. KTY Int’l Mktg.*, 768 F. Supp. 2d 1049, 1054 (C.D. Cal. 2011).

20 Defendants’ breach of their contracts with TRMC has directly, proximately, and
 21 foreseeably caused TRMC to suffer damages. Failure to enter default judgment would
 22 sanction Defendants’ disregard for the parties’ contracts, as well as condone their
 23 unwillingness to resolve the matter through the judicial process. “If the Court does not
 24 enter a default judgment, it will allow Defendant[s] to avoid liability by not responding
 25 to Plaintiff’s claims.” *Amini Innovation*, 768 F. Supp. 2d at 1054.

26 **B. There Is Merit To Plaintiff’s Substantive Claims And The Complaint**
 27 **Is Sufficient.**

28 Courts then consider the second and third *Eitel* factors, which assess the
 substantive merit of a plaintiff’s claim and the sufficiency of its pleadings. *PepsiCo*,

238 F. Supp. 2d at 1175; *Landstar Ranger, Inc. v. Parth Enters., Inc.*, 725 F. Supp. 2d 916, 920 (C.D. Cal. 2010). The Ninth Circuit has suggested that these two factors require that a plaintiff “state a claim on which the [plaintiff] may recover.” *Kloepping v. Fireman’s Fund*, No. C 94-2684 TEC, 1996 WL 75314, at *2 (N.D. Cal. Feb. 13, 1996) (citing *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978)). Courts accept well-pleaded allegations regarding liability as true. *TeleVideo Sys, Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987). TRMC’s well-pled complaint has satisfied these two factors, and to support this, each cause of action is addressed in turn.

1. Count 1: Breach of Contract

The elements of a claim for breach of contract are “(1) the existence of a contract; (2) performance by the plaintiff; (3) breach by the defendant; and (4) damage to the plaintiff as a result of defendant’s breach.” *Landstar*, 725 F. Supp. 2d at 920.

Here, TRMC and SB Gas are parties to valid and enforceable contracts – the RSA and the RLA. ECF 1 ¶¶ 15, 25. TRMC has performed all of its obligations under the RSA and the RLA, and/or its performance was excused by SB Gas’s unilateral, unauthorized termination of the parties’ agreements. *Id.* ¶ 26. SB Gas materially breached the RSA by discontinuing the sale of Shell-branded gasoline at the Station, and by failing to continue purchasing gasoline from Plaintiff to supply the Station. *Id.* ¶ 27. SB Gas’s breach constitutes an “Event of Default” under the RSA, and TRMC sent a notice of termination of the RSA and the franchise relationship to SB Gas on or about June 13, 2017. *Id.* ¶ 28. SB Gas’s breach obligates SB Gas to pay TRMC liquidated damages of \$.025 per gallon for the difference between the 15,000,000 gallon Minimum Quantity specified in the RSA and the 3,036,964 gallons of diesel and Shell-branded gasoline purchased under the RSA. *Id.* ¶ 29. SB Gas has not paid any portion of the liquidated damages owed under the RSA. *Id.* SB Gas’s default under the RSA also obligates SB Gas to reimburse the \$125,000 loan plus interest as specified in the RLA. *Id.* ¶ 30. SB Gas has not reimbursed any portion of the loan or interest owed thereon.

1 *Id.* As a direct, proximate and foreseeable result of SB Gas’s breaches, TRMC has
 2 suffered damages. *Id.* ¶ 31.

3 Thus, TRMC has stated a meritorious claim for breach of contract against SB
 4 Gas. TRMC is entitled to default judgment. *Landstar*, 725 F. Supp. 2d at 921 (entering
 5 default judgment on breach of contract action).

6 **2. Count 2: Breach of Guaranty**

7 The elements of a claim for breach of guaranty are: 1) the existence of a valid
 8 guaranty; 2) default by the borrower; and 3) failure of the guarantor to perform under
 9 the guaranty. *Indymac Bank, F.S.B v. Aryana/Olive Grove Land Dev., LLC*, 2013 WL
 10 12129624, at *6 (C.D. Cal. Sept. 4, 2013) (citing *Grayl CPB, LLC v. Kolokotronis*, 202
 11 Cal. App. 4th 480, 486 (2011) and *Torrey Pines Bank v. Superior Court*, 216 Cal. App.
 12 3d 813, 819 (1989)), *aff’d*, 636 F. App’x 704 (9th Cir. 2016).

13 TRMC and Mr. Abadi are parties to a valid and enforceable guaranty agreement
 14 (the “Continuing Guaranty”). ECF 1 ¶¶ 16, 33. In the Continuing Guaranty, Mr. Abadi
 15 personally and unconditionally guaranteed full payment and performance, when due, of
 16 all debts and obligations of SB Gas to TRMC. The Continuing Guaranty also provides
 17 that Mr. Abadi agrees to pay any attorneys’ fees, costs, and expenses associated with any
 18 action by TRMC to enforce the Continuing Guaranty. *Id.* ¶ 34. Neither SB Gas nor Mr.
 19 Abadi has paid any of the amounts that SB Gas owes to TRMC that are sought in this
 20 action. *Id.* ¶ 36. Thus, Mr. Abadi has breached the Continuing Guaranty because he has
 21 not paid SB Gas’s unpaid debt to TRMC. *Id.* ¶ 37.

22 **C. The Amount Of Money At Stake Is Appropriate.**

23 “The amount at stake must not be disproportionate to the harm alleged.” *Nielson*
 24 *v. Synergy Holdings, LLC*, 2016 WL 715769, at *3 (C.D. Cal. Feb. 22, 2016). Apart
 25 from prejudgment interest, TRMC now seeks \$424,075.90 in contract damages listed in
 26 the Complaint that was served on Defendants. That amount is appropriate in light of the
 27 Defendants’ obligations under the RSA, RLA, and Continuing Guaranty. Prejudgment
 28 interest of \$53,237.62 for 1.25 years calculated at 10% per year on the RSA contract

1 damages and 12% per year compounding monthly on the RLA damages is also
 2 appropriate, especially given that these prejudgment interest rates are calculated
 3 pursuant to the RLA and RSA, and that Defendants refused to compensate TRMC when
 4 TRMC notified Defendants of the amounts owed in a letter dated June 13, 2017 (Exhibit
 5 1 to Caudle Decl.).

6 **D. There Is No Reasonable Possibility Of A Dispute Over Material Facts.**

7 When a plaintiff has filed a well-pleaded complaint, there is little to no possibility
 8 of a dispute concerning material facts. *Castworld Prods., Inc.*, 219 F.R.D. at 500;
 9 *TeleVideo*, 826 F.2d at 917-18. Here, TRMC filed a well-pleaded and detailed
 10 complaint, yet the Defendants defaulted by failing to appear. Thus, “the likelihood that
 11 any genuine issue may exist is, at best, remote.” *Castworld Prods., Inc.*, 219 F.R.D. at
 12 500.

13 **E. Defendants’ Default Is Not Due To Excusable Neglect.**

14 The Defendants were served and received notice of their default and Plaintiff’s
 15 intent to file a motion for default judgment. ECF 8, 9; Exhibit 1 to Crawford Decl.
 16 Moreover, Defendants were informed in a Notice of Termination letter dated June 13,
 17 2017 of the amounts they owed to TRMC upon termination of the RSA and related
 18 agreements, but Defendants did not respond to TRMC’s letter. Castañeda Decl. ¶ 3;
 19 Exhibit 1 to Caudle Decl. In cases such as this where the “Defendants failed to answer
 20 the complaint” and have ignored “multiple notices” regarding this lawsuit, their default
 21 “did not result from excusable neglect, but rather from willful disobedience.”
 22 *Castworld Prods., Inc.*, 219 F.R.D. at 501.

23 **F. The Policy Favoring Decisions On The Merits Is Not An Obstacle**

24 Although public policy favors a decision on the merits, the existence of Rule
 25 55(b) presupposes that in some instances a decision on the merits is not possible or
 26 practical. *PepsiCo*, 238 F. Supp. 2d at 1177. Indeed, a defendant’s failure to answer a
 27 complaint makes a decision on the merits impractical, if not impossible. *Castworld*
 28 *Prods., Inc.*, 219 F.R.D. at 501. Similarly, courts favor entry of default judgment when

the defendant has been properly served or was aware of the suit. *Landstar*, 725 F. Supp. 2d at 922.

Where, as here, a defendant was properly served and has failed to appear, the policy in favor of decisions on the merits is outweighed by the impracticality posed by the defendant's absence and the final *Eitel* factor does not preclude a default judgment. *Nielson*, 2016 WL 715769, at *4.

* * *

In sum, every *Eitel* factor weights in favor of granting the motion for default judgment. Thus, the Court should enter a default judgment against Defendants.

VII. CONCLUSION

For the foregoing reasons, TRMC respectfully requests that the Court:

1. Enter Default Judgment finding Defendants liable on all counts in the Complaint in this action;
2. Enter a monetary award in the amount of \$490,859.79 which includes \$424,075.90 in contractual damages, \$53,237.62 in prejudgment interest, and \$13,546.27 in costs and attorney fees; and
3. Enter an award of post-judgment interest.

Dated: September 26, 2018

AKIN GUMP STRAUSS HAUER & FELD LLP
SUSAN K. LEADER
ASHLEY VINSON CRAWFORD
KELLY A. HANDSCHUMACHER

By /s/ Ashley Vinson Crawford

Ashley Vinson Crawford
 Attorneys for Plaintiff
 Tesoro Refining & Marketing Company LLC

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 1999 Avenue of the Stars, Suite 600, Los Angeles, CA 90067-6022. On September 26, 2018, I served the foregoing document(s) described as:

1. **PLAINTIFF'S NOTICE OF MOTION AND MOTION FOR ENTRY OF DEFAULT JUDGMENT;**
2. **[PROPOSED] DEFAULT JUDGMENT;**
3. **PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT;**
4. **DECLARATION OF ASHLEY VINSON CRAWFORD IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT;**
5. **DECLARATION OF JOHN L. CASTANEDA IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT;**
and
6. **DECLARATION OF SHERRIE L. CAUDLE IN SUPPORT OF PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT JUDGMENT**

on the interested party(ies) below, using the following means:

Ahmad Abadi
151 N. Thurston Ave.
Los Angeles, CA 90049

SB Gas & Wash Management, Inc.
151 N. Thurston Ave.
Los Angeles, CA 90049

☐ BY UNITED STATES MAIL. I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ BY OVERNIGHT DELIVERY. I enclosed the document(s) in an envelope or package provided by an overnight delivery carrier and addressed to the respective address(es) of the party(ies) stated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

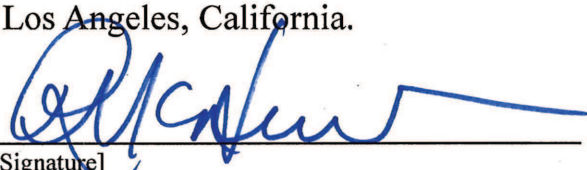
1 ☐ BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION. Based on a court order or an
2 agreement of the parties to accept service by e-mail or electronic transmission, I caused
3 the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated
above. I did not receive, within a reasonable time after the transmission, any electronic
message or other indication that the transmission was unsuccessful.

4 ☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this
5 court at whose direction the service was made.

6 Executed on September 26, 2018 at Los Angeles, California.

7 Rebecca McNew

8 [Print Name of Person Executing Proof]

9 
[Signature]